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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,096

05/01/2008

Patrick Blin

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

NOTIFICATION DATE

DELIVERY MODE

03/31/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

Office Action Summary	Application No. 10/598,096	Applicant(s) BLIN, PATRICK	
	Examiner Gary E. Elkins	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 19-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20081230, 20071005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. With respect to the IDS filed 05 October 2007, note is made that no copy of the references DE 3612594 and DE 7510538 are currently present in the application. The only documentation present are English language abstracts which have been considered. The Examiner does not have access to these references outside of what has been provided by Applicant. If Applicant wishes the entire document to be considered with respect to these references, copies must be provided.

Claim Rejections - 35 USC § 112

2. Claims 19-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 1 of claims 19 and 26, "such as bottles" is narrative and unclear in scope.

In claim 19, lines 5 and 8, "articles" and "a side wall panel" are each a double inclusion of an element.

In claim 21, "the weakened line of severance" is unclear insofar as three weakened lines of severance were previously set forth in the claim, i.e. which of the plurality is being referred to?

In claim 22, "the dispensing feature" lacks antecedent basis in the claims.

In claim 25, "weakened lines of severance" appear to be a double inclusion of an element insofar as the "further weakened line of severance" associated with each end closure means were previously defined in claim 19.

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Claims 26-28 and 33 are unclear with respect to what is being claimed. The preamble indicates that a blank is claimed. However, all the limitations within the body of the claims relate to the carton which the blank is intended to form.

In claim 26, lines 5, 7 and 8, "the carton walls" and "the carton wall" lack antecedent basis in the claim.

In claim 26, line 8, "the carton wall" is unclear since a plurality of carton walls were previously recited.

In claim 26, line 8, "where a setup carton the access means provides" is unclear in meaning.

In claim 26, line 8, "a...carton" is a double inclusion. The carton was previously set forth in the claim.

In claim 26, lines 9 and 10, "the dispensing feature" lacks antecedent basis in the claim.

In claim 27, "at least two adjacent panels" and "transverse lines of weakness" are each a double inclusion of elements. The transverse lines of weakness in claim 27 appear to be referring to the weakened line of severance as set previously in claim 26.

In claim 27, the panels being referred to are unclear within the context of the claim. The only panels previously recited in claim 26 are the bottom, top and side panels. The lines of weakness, as disclosed, are only formed in the top and one of the sides and they are not contiguous in the carton.

In claim 28, "the transverse line of weakness" is unclear since a plurality were set forth in claim 27.

In claim 28, line 3, 'the dispensing feature lacks antecedent basis in the claims.

In claim 29, line 5, "said end closure walls" lacks antecedent basis in the claims.

In claim 29, lines 2 and 3, "the weakened line of severance and "said weakened line" are each unclear since a plurality of weakened lines of severance were previously defined in claim 19.

In claim 33, "said transverse line of weakness and "the dispensing feature" each lack antecedent basis in the claims.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19-22, 24-26 and claim 28, and claims 27 and 33, as best understood in view of paragraph 2 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Lankhuijzen (US 5,582,345). Lankhuijzen discloses a carton and blank including two weakened lines of severance in two adjacent panels 6, 8a and further weakened lines of severance in end flaps 14a, 16a, 14b and 16b connecting ends of the two weakened lines of severance. With respect to claim 22, note is made of the punch outs adjacent 46, 53 which allow hand access to the dispensing features. It is noted that no distinction is seen between the carton claimed and that of Lankhuijzen as a result of the claimed intended orientation of the carton walls as top and bottom, i.e. the carton of Lankhuijzen is capable of being oriented with the panel 6 as a top panel. With respect to claim 20, note is made that no distinction is seen between the claimed carton and that of Lankhuijzen as a result of the claimed intended use of the carton to hold bottles with the bottoms of the bottles

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against the bottom of the carton, i.e. the carton of Lankhuijzen is capable of containing bottles with the orientation claimed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lankhuijzen (US 5,582,345). Lankhuijzen discloses a carton including all claimed structure except formation of the bottom panel larger than the top panel. It would have been obvious to make the bottom panel 10a, 10b larger than the top panel 6 as a mere change in the size and shape of the container as a mere change in size. No functional distinction is seen between the claimed container and that of Lankhuijzen as a result of the claimed change in size nor has any such functional distinction been asserted by Applicant. Design applications are available to patent differences in appearance. In this regard, it is noted that claim 23 encompasses any change of shape including as little as a 1 mm change as a result of scoring the material differently.

7. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lankhuijzen (US 5,582,345) in view of Spivey (US 6,578,736). Lankhuijzen discloses all structure of the claimed carton except forming the weakened line as an endless line. Spivey teaches that it is known to make a tear out portion of a carton using a single tear line formed by a continuous line of tear through the end flaps of the carton. It would have been obvious to make the tear out sections in Lankhuijzen using a line of tear and using an endless line linked through

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the end flaps as taught by Spivey to eliminate waste material during tearing and to provide a stronger container by eliminating cuts in the material. Both tear strips and tear lines are well known in this art.

Allowable Subject Matter

8. Claims 31 and 32, as best understood in view of paragraph 2 above, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

Any inquiry related to this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the Electronic Business Center (EBC) at (866) 217-9197 (toll free). You may also contact a USPTO Customer Service Representative or access the automated information system at 1-800-786-9199 (in USA or Canada) or 1-571-272-1000.

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